

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ROBERT ADAM KORTHALS,
KYLE EDWARD KORTHALS, OLIVIA RYAN
KORTHALS, and JACOB THOMAS
KORTHALS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ROBERT CHARLES KORTHALS,

Respondent-Appellant,

and

NICOLE KORTHALS,

Respondent.

UNPUBLISHED

July 7, 2005

No. 256541

Macomb Circuit Court

Family Division

LC No. 00-050049-NA

Before: Gage, P.J., and Whitbeck, C.J., and Saad, J.

PER CURIAM.

Respondent appeals by delayed leave granted the order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if child returned to home of parent). We affirm.

Respondent argues that the lower court erred when it found statutory grounds for termination. Parents have a fundamental liberty interest in the care, custody, and control of their children. *Troxel v Granville*, 530 US 57, 65-66; 120 S Ct 2054; 147 L Ed 2d 49 (2000); *In re Trejo Minors*, 462 Mich 341, 373; 612 NW2d 407 (2000). However, when there is clear and convincing evidence of a statutory ground for termination, the parent's liberty interest no longer includes the right to custody and control of his child. *In re Trejo Minors*, *supra* at 355. A petitioner must establish at least one statutory ground for termination of parental rights by clear and convincing evidence. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). We review for clear error a trial court's decision that clear and convincing evidence supported a statutory ground for termination of parental rights. MCR 3.977(J); *In re JK*, *supra* at 209. A trial court's factual findings are clearly erroneous if, although some evidence exists to support the findings,

we are left with a definite and firm conviction that a mistake has been made. *In re Pardee*, 190 Mich App 243, 250; 475 NW2d 870 (1991).

The lower court did not err when it found clear and convincing evidence that the conditions leading to adjudication continued to exist and respondent was not reasonably likely to rectify them within a reasonable amount of time, under MCL 712A.19b(3)(c)(i). Respondent failed to comply with his parent-agency agreement, which required him to submit to drug screens and submit proof of Alcoholics Anonymous attendance, to establish he rectified his substance abuse.¹ Respondent also failed to obtain suitable housing for him and his children.

We also find that the lower court did not err when it found clear and convincing evidence to support termination of respondent's parental rights under MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (reasonable likelihood of harm if child returned to home of parent). Respondent did not have suitable housing or sufficient finances to support the children. Respondent was unemployed due to a disability at the time of the termination proceedings. Although respondent testified that he would be collecting a lump sum payment and monthly pension payments from his union retirement plan, he did not provide the court with any verification, nor was he able to testify regarding exactly when he would be receiving these payments and the exact amount. Further evidence of respondent's inability to provide proper care included respondent's decision to stop his own efforts toward custody when it appeared that the children's mother might be awarded custody.

Respondent also argues that termination was against the children's best interests. When a lower court finds a statutory ground for termination, it must terminate parental rights unless termination is clearly against the child's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 352, 354. On appeal, respondent cited an out-of-state case as support for his assertion that parental rights create a rebuttable presumption that parental custody is in the child's best interests. However, in *In re Trejo Minors, supra* at 353, the Michigan Supreme Court clarified that MCL 712A.19b(5) does not create a rebuttable presumption regarding the child's best interests. There is no specific burden on either party to present evidence of the child's best interests; rather, the trial court may weigh all evidence on the record. *Id.* at 353.

In the present case, witnesses testified that the children loved respondent. However, respondent's Family Independence Agency (FIA) caseworker testified that there was no additional bond between the children and respondent. The FIA caseworker further testified that the children relied on their maternal grandparents, who helped raise them from birth and cared for them throughout the proceedings, for love, affection, care, support, and guidance. The lower court did not err when it held that termination of respondent's parental rights was in the

¹ Respondent attempted to admit proof of Alcoholics Anonymous (AA) attendance at trial. Respondent failed to provide verification to prove authenticity of the documents and therefore the documents were not admitted. Furthermore, respondent failed to provide the Family Independence Agency caseworker with proof of AA attendance.

children's best interests.

Affirmed.

/s/ Hilda R. Gage
/s/ William C. Whitbeck
/s/ Henry William Saad